

IN THE MATTER OF

SEAKCO NEW YORK, LLC, DBA SEAKCO  
CONSTRUCTION COMPANY, LLC;

and

ROBERT L.  
EVANS, and MANUEL RESTREPO  
as officers and managing members of  
SEAKCO NEW YORK, LLC,

DBA SEAKCO CONSTRUCTION COMPANY, LLC  
Prime Contractor

for a determination pursuant to Article 8 of the Labor Law  
as to whether prevailing wages and supplements were paid  
to or provided for the laborers, workers and mechanics  
employed on a public work project for the Bolton  
Conservation Park Center in Bolton landing, New York.

**REPORT  
&  
RECOMMENDATION**

Prevailing Rate Case  
PRC No. 2011007406  
Case ID: PW082010017073  
Westchester County

To: Honorable Peter M. Rivera  
Commissioner of Labor  
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on May 8, 2013, in Albany, New York and White Plains, New York by videoconference. The purpose of the hearing was to provide the parties with an opportunity to be heard on the issues raised in the Notice of Hearing and to establish a record from which the Hearing Officer could prepare this Report and Recommendation for the Commissioner of Labor.

The hearing concerned an investigation conducted by the Bureau of Public Work ("Bureau") of the New York State Department of Labor ("Department") into whether Seakco New York, LLC, d/b/a Seakco Construction Company, LLC and Robert L. Evans and Manuel Restrepo, as officers and managing members ("Prime"), complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of a contract involving window restoration at the Elephant Hotel ("Project") for the Town of Somers, New York ("Department of Jurisdiction"), in the County of Westchester.

## **APPEARANCES**

The Bureau was represented by Department Counsel, Pico Ben-Amotz, (Elina Matot, Senior Attorney, of Counsel.

There was no appearance made by, or on behalf of, Prime.

## **FINDINGS AND CONCLUSIONS**

On November 16, 2012, the Department duly served a copy of the Notice of Hearing on Prime, via regular and certified mail, return receipt requested. The Domestic Return Receipt cards addressed to Robert L. Evans and Manuel Restrepo were signed and returned to the Department. The regular mail envelope addressed to Seakco New York, LLC, was not returned to the Department. The Notice of Hearing scheduled a May 8, 2013 hearing and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

Prime failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing. As a consequence, Prime is in default in this proceeding.

The Notice of Hearing alleges that Prime underpaid wages and supplements to four of its workers on the Project.

At the hearing, the Department produced substantial and credible evidence, including the sworn testimony of the Bureau investigator, and documents describing the underpayments, which supported the Bureau's charges that:

The Project was subject to Labor Law article 8; and

Seakco Construction Company, LLC, is a domestic limited liability company established in the State of Connecticut.

Seakco Construction Company, LLC, entered into a contract for the Project with the Department of Jurisdiction; and

Seakco Construction Company, LLC willfully underpaid \$49,724.01 in wages and supplements to its workers for the audit period weeks ending April 20, 2010 to August 10, 2010; and

Seakco Construction Company, LLC falsified its payroll records in connection with that willful underpayment; and

Robert L. Evans owns 100% of Seakco Construction Company, LLC; and

Robert L. Evans is the chief executive officer and chief fiscal officer of Seakco Construction Company, LLC; and

Robert L. Evans is a member of Seakco New York, LLC, a business entity registered with the New York State Secretary of State; and

Seakco New York, LLC, filed a Certificate of Assumed Name with the New York State Secretary of State for the assumed name of "Seakco Construction."

Robert L. Evans knowingly participated in the violation of Labor Law article 8; and

On April 9, 2012, the Department issued a Notice to Withhold Payment in the amount of \$92,058.15 to the Department of Jurisdiction, which responded that all contract funds had been paid to Prime.

For the foregoing reasons, the findings, conclusions and determinations of the Bureau should be sustained.

## **RECOMMENDATIONS**

Based upon the default of the Prime in answering or contesting the charges contained in the Department's Notice of Hearing, and upon the sworn and credible testimonial and documentary evidence adduced at hearing in support of those charges, I recommend that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

DETERMINE that Seakco Construction Company, LLC underpaid its workers \$49,724.01 on PRC No. 2011007406; and

DETERMINE that Seakco Construction Company, LLC is responsible for interest on the total underpayment at the statutorily mandated rate of 16% per annum from the date of underpayment to the date of payment; and

DETERMINE that the failure of Seakco Construction Company, LLC to pay the prevailing wage or supplement rate was a “willful” violation of Labor Law article 8; and

DETERMINE that the willful violation of Seakco Construction Company, LLC involved the falsification of payroll records under Labor Law article 8; and

DETERMINE that Robert L. Evans is the 100% owner, chief executive officer, and chief fiscal officer of Seakco Construction Company, LLC; and

DETERMINE that Robert L. Evans knowingly participated in the violation of Labor Law article 8; and

DETERMINE that Robert L. Evans is a member of Seakco New York, LLC, a business entity registered with the New York State Secretary of State; and

DETERMINE that Prime be assessed a civil penalty in the Department’s requested amount of 25% of the underpayment and interest due; and

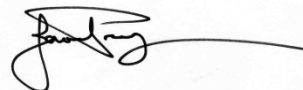
ORDER that the Bureau compute the total amount due (underpayment of \$49,72 interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that upon the Bureau’s notification, Prime shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at : 120 Bloomingdale Road, Room 204, White Plains, NY 10605; and

ORDER that the Bureau compute and pay the appropriate amount due for each employee on the Project, and that any balance of the total amount due shall be forwarded for deposit to the New York State Treasury.

Dated: May 20, 2013  
Albany, New York

Respectfully submitted,



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Jerome A. Tracy, Hearing Officer  
Office of Administrative Adjudication  
SOB Campus Bldg 12 Room 266c  
Albany NY 12240